

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY RICHARD PRZEWOZNIK,

Defendant-Appellant.

UNPUBLISHED

January 12, 2006

No. 258010

Allegan Circuit Court

LC No. 04-013525-FH

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of operating/maintaining a methamphetamine laboratory near a residence, MCL 750.7401c(2)(d), and his resulting sentence of 72 months' to 30 years' imprisonment. We affirm.

Defendant first claims that he was denied his right to due process where police had destroyed much of materials and equipment that defendant allegedly used to produce methamphetamine. We disagree. Defendant preserved this issue by filing a pre-trial motion to suppress statements or photographs concerning the destroyed evidence, which the trial court denied. "[W]hen considering a trial court's ruling on a motion to suppress evidence," "[w]e review a trial court's findings of fact for clear error, giving deference to the trial court's resolution of factual issues." *People v Bolduc*, 263 Mich App 430, 436; 688 NW2d 316 (2004). However, we review de novo a trial court's ultimate decision on a motion to suppress. *Id.* Furthermore, constitutional questions are reviewed de novo. *People v Dunbar*, 463 Mich 606, 615; 625 NW2d 1 (2001).

In *Arizona v Youngblood*, 488 US 51, 57-58; 109 S Ct 333; 102 L Ed 2d 281 (1988), the Supreme Court held:

[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.

In this case, the destroyed evidence included various items used in the production of methamphetamine – specifically mason/canning jars, boxes of salt, a blender, tubing, Coleman fuel, which is a solvent, "peeled" lithium batteries, coffee filters, a propane tank, wrenches, and other tools. Detective Craig Gardiner identified pictures taken of the evidence before its

destruction and testified that defendant admitted that he owned the items. Both Gardiner and Detective Shane Criger testified that the items were destroyed pursuant to state police policy regarding the handling of hazardous materials. Criger testified that the chemicals used during the production of the drug are volatile, hazardous, and potentially deadly when combined and, further, that all items would be destroyed under this policy because hazardous material produced during the manufacture of methamphetamine can easily attach itself to nearby surfaces. In this case, the record does not indicate that the police had the materials destroyed for any reason other than the above stated policy. Defendant therefore has not shown that the police destroyed the evidence in bad faith. Accordingly, defendant's argument that the destruction of this evidence by police violated his due process rights lacks merit.

Defendant also notes that no instruction was given to the jury that it should presume that the destroyed evidence would have favored him. However, the lower court record does not reflect that defendant requested this instruction and, in fact, defendant indicated his approval of the instructions as given. Furthermore, in *People v Davis*, 199 Mich App 502, 514-515; 503 NW2d 457 (1993), this Court held that the defendant was not entitled to such an instruction where he did not demonstrate that the prosecutor acted in bad faith. As noted above, defendant has failed to show that the police destroyed the evidence in bad faith; therefore, defendant would not have been entitled to such an instruction had he requested one.

Defendant next claims that the trial court should have suppressed his confession because the detectives failed to make an audio or video recording of it. Specifically, defendant requests that this Court reconsider its decision in *People v Fike*, 228 Mich App 178, 183-186; 577 NW2d 903 (1998), lv den 459 Mich 943 (1999), where this Court held that there is no requirement that police record interrogations of a defendant. We decline to do so.

This Court recently revisited the *Fike* decision in *People v Geno*, 261 Mich App 624, 627; 683 NW2d 687 (2004), and rejected the defendant's argument, noting that, in *Fike, supra*, this Court "clearly and explicitly rejected the defendant's argument that testimony arising out of his custodial interrogation should be suppressed because it was not tape recorded." This Court further stated:

We relied heavily on the fact that this is not required by the United States Constitution, stating: "the courts of this state should reject unprincipled creation of state constitutional rights that exceed their federal counterparts." . . . [M]ost states have rejected the requirement as being constitutionally mandated. Ultimately, we concluded that granting the defendant's request would constitute an unprincipled creation of state constitutional rights. [*Geno, supra* at 627-628; citations omitted.]

In addition, the *Fike* decision is binding on this Court pursuant to MCR 7.215(J)(1). In *Geno*, this court rejected the defendant's invitation to declare a conflict panel to address whether to

impose a recording requirement. *Geno, supra* at 628. Given this binding precedent and this Court's recent adherence to its decision in *Fike*, defendant has failed to show any error.¹

Finally, defendant asserts that he is entitled to resentencing because the trial court erred in scoring OV 14 at ten points. We disagree. The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record which adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "Scoring decisions for which there is any evidence in support will be upheld." *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). This Court reviews scoring decisions to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

MCL 777.44 – offense variable 14 – considers the offender's role in a crime and allows for the scoring of ten points where "[t]he offender was a leader in a multiple offender situation." In the present case, Gardiner testified that nine individuals were present at the Larson home the night in question, several of whom had already been involved with the production of methamphetamine in the past. Gardiner further testified that defendant admitted that the chemicals and equipment found in Larson's garage were his and that he had altered a propane tank with the intention of stealing anhydrous ammonia. Criger testified that, after defendant and Larson arrived at the residence that night, people began going in and out of the garage, where the chemicals and equipment were later found. Therefore, the record supports the trial court's finding that, as the owner of the chemicals and equipment to be used in the production of the drug, defendant was a leader among those present at the Larson home intending to produce methamphetamine.

Affirmed.

/s/ Brian K. Zahra
/s/ William B. Murphy
/s/ Janet T. Neff

¹ We note that, as in the *Fike* decision, defendant's case would not be saved by an adoption of the recording requirement because "there is no reason to exclude a defendant's statements if no testimony is presented that the statement is inaccurate or was obtained improperly." *Fike, supra*, 228 Mich App at 184, quoting *Stephan v State*, 711 P 2d 1156, 1165 (Alas, 1985). In the present case, defendant argued that his statements should have been suppressed "because of the possibility that the testimony of Detective Gardiner was inaccurate." (Emphasis added.) However, there was no testimony presented alleging that Gardiner's testimony in regard to defendant's statements was inaccurate and the trial court found no evidence that the statements were involuntary. Therefore, defendant would not be entitled to relief even if Michigan had adopted the requirement that interrogations be recorded.